of attorney, where, as in the case of a gratuitous delivery of a specialty, such a power is fairly to be implied. The arbitrary distinction now existing between gifts *inter vivos* and *donationes mortis causa* would thereby disappear. We should also have, on both sides of the Atlantic, a just, simple, and uniform rule as to gifts of choses in action.

INEVITABLE ACCIDENT A DEFENCE TO ACTION OF TRESPASS. — The rule, so well settled in America,[1] that inevitable accident is a good defence to an action of trespass for personal injuries, has not hitherto found entire favor with the English courts. There crept very early into the English law a principle, which the courts have been slow to repudiate, to the effect that he who acts voluntarily acts at his peril, and is responsible for personal injuries to another resulting from his acts, though the injury be the outcome neither of wilful wrongdoing nor of negligence.[2] The few cases in which a defence has been allowed have been decided either upon principles of expediency or upon questions of pleading. For example, in *Holmes* v. *Mather*,[3] where the plaintiff was knocked down by the defendant's runaway horses, it was held that such an accident was one of the ordinary risks of the road, which a person travelling upon the road took upon himself. In *Fletcher* v. *Rylands*[4] Lord Blackburn remarks that all the cases "in which inevitable accident has been held an excuse for what *prima facie* was a trespass, can be explained on the principle that the circumstances were such as to show that the plaintiff had taken that risk upon himself." That is, the English judges have obstinately refused to adopt squarely the reasoning of the American courts, that where a man uses due care he is not responsible for results which could not have been foreseen, and, while practically arriving at the same results in a number of cases, have based their decisions upon narrow and unsatisfactory grounds.

It is refreshing, therefore, to find Justice Denman, in the recent case of *Stanley* v. *Powell*,[5] facing the music squarely and holding that, in the absence of negligence, a man who accidentally shoots another is not liable in an action of trespass. He reviews the English cases upon the subject, and concludes that the bulk of authority in favor of the opposite view may be sifted down to a few dicta or decisions which went off on other grounds. In commenting upon the well-known case of *Weaver* v. *Ward*[6] Justice Denman says: "I can find nothing in the report to show that the court held that in order to constitute a defence in the case of a trespass it is necessary to show that the act was inevitable. If inevitable, it would seem that that was a defence under the general issue; but a distinction is drawn between an act which is inevitable and an act which is excusable, and what *Weaver* v. *Ward* really lays down is that 'no man shall be excused of a trespass except it may be judged utterly without his fault.'" Further on, in reference to the case at bar, he says: "It was argued that inasmuch as the plaintiff was injured by a shot from defendant's gun, that was an injury owing to an act of force committed by defendant, and therefore an action would lie. I am of opinion that this is not so, and that to any statement of claim which the plaintiff could suggest the defendant must

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[1] *Brown* v. *Kendall*, 6 Cush. 292.
[2] Year Book, 21 Hen. VII, p. 28 a.
[3] L. R. 10 Ex. 261.
[4] L. R. 1 Ex. 265, at 287.
[5] 39 W. R. 77.
[6] Hob. 134.

succeed if the defendant pleaded" that he was guilty of no negligence. It is rather noteworthy that Justice Denman makes no reference to Lord Blackburn's remark in *Fletcher* v. *Rylands*, above quoted.

Stanley v. *Powell* may be considered as definitely settling the English law upon the subject; and though no mention was made by Justice Denman of the leading American cases, it is not too strong an inference to suppose that he must have had them in mind, and was influenced by their practical, common-sense doctrine.

EMPLOYER'S LIABILITY FOR INJURIES RESULTING FROM DEFECTIVE MACHINERY. — It is established law that an employer is bound to use ordinary care to keep in a reasonably safe condition the place where his employees are required to work. It is equally well established that an employee assumes all risks incident to the service into which he enters. But where a negligent breach of duty on the part of the employer augments the hazards of the service, the employee may hold the employer accountable, unless, by voluntarily continuing in the employer's service, he has assumed such danger. The master is still responsible when he has been negligent, even though the negligence of a fellow-servant may have concurred in bringing injury on the plaintiff.

It has often been asked how far a servant, the performance of whose duties becomes dangerous through the negligence of his employer properly to repair the premises, is justified in relying upon his employer's promise to amend the defect, when he himself has full knowledge of the dangerous conditions which exist, and of the risk which he runs by continuing in the service. The question was suggested again by a dictum of Morton, J., in the case of *Lewis* v. *N. Y. & N. E. R. R. Co.* (26 N. E. Rep. 431). The Massachusetts court gave no decision directly upon the point, however, for the plaintiff could not testify that he had urged the defendant's superintendent to make repairs because the discharge of his own duties had become more dangerous. Most, if not all, previous cases have gone upon the ground that the servant was led to continue at his employment by the master's promise that the defect complained of should be remedied. In some of them, there is a direct request to the servant, by the master or his representative, so to continue in service.

Another recent decision is that of *Rogers et al.* v. *Leyden* (26 N. E. Rep. 210), where the Indiana court held, after indorsing the propositions stated above, that the fact that the plaintiff remained in the defendant's employ after he had discovered that the risk thereof had been increased by the defendant's negligence, could not preclude recovery, where the defendant promised to remove the threatened danger.

Decisions which accord with that in the Indiana case have not been founded merely upon what was thought to be a rule of public policy, but upon contracts implied from the relationship of service, allowing the servant to rely upon the master's promise, unless the danger of continuing is so great that a reasonably prudent man would not assume it. And a similar explanation is undertaken by certain leading text-writers. It is said that a servant has the same right that any one else has to complete his contract in reliance upon its original terms. The